

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH)
BENEFITS FUND, PIRELLI ARMSTRONG)
RETIREE MEDICAL BENEFITS TRUST;)
TEAMSTERS HEALTH & WELFARE FUND)
OF PHILADELPHIA AND VICINITY;)
PHILADELPHIA FEDERATION OF)
TEACHERS HEALTH AND WELFARE)
FUND; DISTRICT COUNCIL 37, AFSCME -)
HEALTH & SECURITY PLAN; JUNE)
SWAN; BERNARD GORTER, SHELLY)
CAMPBELL and CONSTANCE JORDAN)

Plaintiffs,)

v.)

FIRST DATABANK, INC., a Missouri)
corporation; and McKESSON)
CORPORATION, a Delaware corporation,)

Defendants.)

C.A. No. 1:05-CV-11148-PBS

**PLAINTIFFS' MOTION FOR LEAVE TO FILE A RESPONSE TO MCKESSON'S
PROPOSED U&C CLASS SCHEDULE**

Plaintiffs seek leave to file the attached brief response to McKesson's Proposed U&C Schedule. McKesson's proposal is premised on several factually impossible assumptions that the Court should consider. Plaintiffs ask leave to file the attached response in response.

DATED: August 1, 2008

By /s/ Steve W. Berman

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CERTIFICATE PURSUANT TO LOCAL RULE 7.1

Pursuant to Local Rule 7.1(A)(2), the undersigned certifies that counsel for Plaintiffs conferred with counsel for Defendant regarding the filing of this motion, who advised Plaintiffs as follows: “The Court asked for simultaneous briefs on the U&C class motion schedule, which both parties filed on July 29. We do not consent to plaintiffs filing another brief, which would be plaintiffs’ fourth to date on this subject.”

/s/ Steve W. Berman

Steve W. Berman

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party through the Court's electronic filing service on August 1, 2008.

/s/ Steve W. Berman
Steve W. Berman

ATTACHMENT

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PLAINTIFFS' RESPONSE TO MCKESSON'S PROPOSED U&C CLASS SCHEDULE

I. INTRODUCTION

Plaintiffs seek leave of Court to respond briefly to the dubious assumptions underlying McKesson's proposed schedule. Simply put, it is factually impossible for the U&C case to be tried on December 1, 2008 even if the Court decided the motion the day McKesson proposes for oral argument.

II. ARGUMENT

McKesson's brief is based on several unlikely assumptions. First, it assumes that the Court would be able to rule quickly on Plaintiffs' motion for certification of the U&C Class. As the Court recently reminded counsel:

[I]t takes me three to six months . . . to write these mega things.

* * * *

I found it very challenging last time. I found it very difficult and very challenging, and it took us a very long time to get through [every] expert, important, and significant and important expert reports. I don't do it lightly.¹

Next, it assumes that neither party would seek First Circuit review of the Court's decision. Each time McKesson has petitioned for review of the Court's opinions, it has taken two to three months for the court to reach its decision and that time is likely to increase by several more months if the court grants the petition.

Further, it assumes that the parties would quickly reach a decision on class notice and the Court would approve the process on short order. As the Court is well aware, these things take time, and according to McKesson's proposed schedule, in which the hearing on the class certification motion is set for November 21, this process would take place whilst the parties were engaged in trial on the TPP and Consumer Co-pay Classes.

Let's run with McKesson's approach. Assume that on November 21 a hearing on class certification was held. Assume the Court decided the motion that day. ***The U&C trial still could not occur until June. Even assuming all of these unlikely eventualities, and the parties are able to approve class notice before December 15, Plaintiffs have been advised by Katherine Kinsella that the notices would not begin to appear until sometime in February***, when the magazines' March issues first appear. Allowing some time for the readership to accrue, a 45-day opt-out period, pre-trial preparations, and ***immediate court availability***, the U&C case would not

¹ Transcript of July 2, 2008 hearing at 28:13-15; 30:8-13

be ready for trial until June or July – five to six months after the trial of the TPP and Consumer Co-pay Classes.

In short, there is little to be gained by pressing forward without the benefit of all of the necessary data. It is clear that McKesson's real motivation is not to preserve judicial resources but to force U&C Plaintiffs to press forward on an incomplete record of McKesson's own doing.

III. CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court grant their motion to stay deadlines until Plaintiffs have received all the data to which they are entitled and the parties have had an opportunity to come up with a mutually acceptable schedule.

DATED: August 1, 2008

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/s/ Steve W. Berman
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